IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9857 OF 2004

Dipak Rajkumar Magdum ..Petitioner.

Vs.

Shri Ganesh Nagari Sahakari
Pat Sanstha Ltd., Ashta Br.,
Pethbhag, Sangli & Ors. ..Respondents.

....

Mr.T.S.Ingale for the Petitioner.

Mr.K.S.Patil for the Respondents.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

21st October, 2005.

P.C. :

1. Rule, made returnable forthwith. Counsel for the Respondents waives service. By consent taken up for hearing and final disposal.

2. The Petitioner claims to be the owner of an immovable property bearing C.T.S. No.4226 situated at Ashta, Taluka Walwa, District Sangli under a

registered sale dated 14th March, 1998. The sale deed was executed in favour of the Petitioner by his brother. A dispute was filed before the Co-operative Court on 15th June, 1998 by the First Respondent and an order of injunction came to be passed therein restraining Opponent No.1 thereto from parting with the possession of the properties mentioned in paragraphs 7(a) and 7(b) of the application. One of those properties is the property in question of which ownership is claimed by the Petitioner. The Co-operative Court passed its award on 17th September, 1999 allowing the claim of the First Respondent and permitting the sale of the properties described in paragraphs 7(a) and 7(b) of the application. The Petitioner moved the Co-operative Appellate Court on 9th March, 2001 claiming that he had obtained knowledge of the judgment of the Co-operative Court for the first time on 3rd February, 2001. The Petitioner was admittedly not a party to the proceedings before the Co-operative Court.

3. The Co-operative Appellate Court has dismissed the application for condonation of delay principally after evaluating the merits of the

contentions of the Petitioner. The Co-operative Appellate Court held that there was no affidavit in support of the application for condonation. In my view, having regard to the nature of the claim of the Petitioner, it would only be appropriate and proper if an opportunity is granted to the Petitioner to file an affidavit in support of the application for condonation and if the application for condonation is accordingly directed to be disposed of afresh. In order to facilitate a fresh consideration, the impugned order dated 19th July, 2003 is quashed and set aside. It would be open to the Petitioner to file an affidavit in support of the application for condonation within a period of four weeks from today. Upon filing of such an affidavit, the Co-operative Appellate Court shall reconsider the application for condonation of delay afresh and endeavour to dispose of the application within a period of three months thereafter. The Petition is accordingly disposed of.

4. All the rights and contentions of the parties are kept open.